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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

PETER ANDREW VAN DINTER,

Petitioner,

v.

THE SUPERIOR COURT OF ORANGE  
COUNTY,

Respondent;

CITY OF FOUNTAIN VALLEY,

Real Party in Interest.

G034207

(Super. Ct. No. 02WF1324)

O P I N I O N

Original proceedings; petition for a writ of mandate/prohibition to challenge an order of the Superior Court of Orange County, James P. Marion, Judge. Petition granted.

Deborah A. Kwast, Public Defender, Thomas Havlena, Chief Deputy Public Defender, Kevin Phillips, Assistant Public Defender, and Donald E. Landis, Jr., Deputy Public Defender, for Petitioner.

Harper & Burns, Alan R. Burns and Colin R. Burns for Real Party in Interest.

Best Best & Krieger, James R. Touchstone and Daniel S. Roberts for  
League of California Cities as Amicus Curiae on behalf of Real Party in Interest.

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Informed that the arresting officer in his criminal case had been dismissed for misconduct, petitioner Peter Van Dinter successfully moved for an in camera review of the officer's personnel file, and received the names and contact information of two police officers who conducted an internal affairs investigation. When these officers refused to reveal details of the alleged misconduct, Van Dinter filed a supplemental motion for disclosure "of any and all verbatim reports, documents, memos, notes, and/or recordings concerning the previously disclosed complainant(s) and/or witness(es) . . . ." The trial court denied the motion, and he now seeks writ relief.

We conclude petitioner is entitled to relief, but the remedy is to reveal the names of other complainants and witnesses not furnished in response to his initial motion, rather than disclosure of the statements contained in the personnel file. Should this prove inadequate, petitioner may file a supplemental motion for disclosure of the statements.

#### FACTUAL AND PROCEDURAL BACKGROUND

Van Dinter is charged with two felony counts of receiving stolen property and possession of a forged driver's license. Shortly before his trial in March 2004, Deputy District Attorney Pete Pierce informed defense counsel that the lead investigator on Van Dinter's case, Fountain Valley Police Officer Aden Naughton, was fired for misconduct. Based on this information, Van Dinter requested the trial court review Naughton's personnel file under Evidence Code section 1043 and *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*) for any information that would undermine Naughton's credibility. Specifically, the defense requested the names of persons who had filed complaints or furnished information demonstrating the officer had fabricated evidence, filed false police reports, or engaged in dishonest acts.

According to the motion, Naughton prepared a police report stating that on February 27, 2002, he and another officer proceeded to a residential neighborhood in Huntington Beach to investigate a possible burglary suspect when they noticed a commercial license plate on a parked Chevrolet Suburban. A computer check revealed the license plate belonged to a Ford truck, whose owner had reported it stolen. Watching from a hidden location, officers observed Van Dinter walk toward the vehicle and remove property from the Suburban. The officers approached and asked Van Dinter if the vehicle belonged to him, but he retreated into the house without answering. Van Dinter emerged from the residence upon Naughton's request. When asked if the Suburban was his, Van Dinter replied, "I'm borrowing it, why? Is it stolen?"

Naughton checked the VIN number from the Suburban and learned the car had been reported stolen. Van Dinter explained he had borrowed the truck from a friend named Robert who was staying at an Irvine hotel. Suspicious about the truck because there were no keys and he had to "start it by defeating the ignition at the steering column," Van Dinter confronted Robert, who assured him it was not stolen. Van Dinter admitted everything in the car was his except a few items, and Naughton allowed him to remove his property from the vehicle. As Van Dinter rummaged through the items in the car, officers spotted credit cards with various names and computer equipment. Van Dinter acknowledged the computer was his. They also found blank driver's licenses and a Michigan license in the name of Travis James Brantor but displaying Van Dinter's picture. Van Dinter accompanied officers to the police station and consented to a videotaped interview. He explained how he had obtained the vehicle from Robert on February 23, and, because Robert did not have car keys, suspected the car was stolen. Robert, however, assured him it was not. Van Dinter denied knowing anything about any of the items found in the car other than the Michigan license, which he "possessed due to a[] previous accident."

Defense counsel alleged on information and belief “that much of Officer Naughton’s account of what happened is false . . . .” Counsel asserted the Suburban was not parked in front of the residence and Van Dinter did not remove any property from it. Rather, the officers approached the house and began questioning Van Dinter about the Suburban. When Naughton asked about the property in the vehicle, Van Dinter denied most of it was his, explaining his papers were mixed in with Robert’s property when they hastily moved their belongings several days earlier. He claimed the computer and credit cards did not belong to him. According to counsel’s declaration, Naughton’s report omitted details of the investigation that would have shown Van Dinter did not knowingly possess a stolen vehicle or credit cards. Counsel asserted it would be “a defense in this case that Officer Naughton has a pattern of dishonesty, omitting relevant facts and filing false police reports.”

The trial court found good cause supported the *Pitchess* motion and reviewed Naughton’s personnel file in chambers. Following the in camera review, the court disclosed to the defense and prosecution the names and phone numbers of two Fountain Valley police officers, Captain (now Chief) Paul Sorrell and Lieutenant Kim Brown. The court did not provide the names of any other witnesses.

A defense investigator interviewed the officers. Asked what prompted their investigation of Naughton, Sorrell stated they received a complaint from outside the department. Asked to elaborate, Sorrell would reveal only that it came from a local car dealership, but refused to provide the name of the dealership or the person who filed the complaint. When pressed for more details, Sorrell replied he could not reveal anything else. Sorrell added there were two other occasions where Naughton “improperly signed off equipment,” and was “less than candid” when asked about these “equipment violations” by two separate supervisors. He again refused to provide further details. Asked if the equipment violations were related to the dealership complaint, Sorrell would say only that the incident occurred during the same time period. Sorrell explained he did

not feel comfortable providing names of any witnesses or victims interviewed during the department's investigation. Questioned whether reports were generated and by whom, Sorrell responded, "I will only say that it was a significant investigation." He acknowledged conducting the investigation with Brown, but declined to answer whether a disciplinary hearing was held. According to Sorrell, Naughton resigned because of a medical problem but refused to elaborate. He also declined to reveal whether the investigation of Naughton led to civil litigation, and declined to reveal anything else. Brown did not answer any questions during the interview, stating she would defer to Sorrell.<sup>1</sup>

Consequently, Van Dinter filed a supplemental *Pitchess* motion seeking disclosure of all reports and witnesses concerning the department's investigation of Naughton's misconduct. Van Dinter argued that Sorrell's refusal to provide details of the investigation frustrated his ability to investigate and present a defense.

The city argued Sorrell was cooperative, provided ample grounds to impeach Naughton, and Van Dinter had enough information to present his defense. Believing the witnesses "answered as best they could," the trial court denied the request for supplemental information.

#### DISCUSSION

To obtain an in camera review of a police officer's personnel file, defendant must file an affidavit under Evidence Code section 1043, subdivision (b)(3), "showing

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<sup>1</sup> According to Sorrell's declaration filed in opposition, the interview lasted approximately 15 minutes. He stated Naughton "was less than truthful" in responding to inquiries concerning his performance as a police officer in 2002 and 2003. Sorrell told the investigator Naughton had on two occasions improperly signed off equipment violation citations without verifying whether the corrections had been made. He felt Naughton had been less than candid in responding to questions during an internal investigation. He noted no witnesses could corroborate either version. There had been no disciplinary hearing because Naughton had taken a medical retirement. Sorrell declined to provide specifics concerning the "personnel matter" or the nature of the medical retirement.

good cause for the discovery or disclosure sought, setting forth the materiality thereof to the subject matter involved in the pending litigation . . . .” Assuming the requisite materiality standard is met, the trial court then examines the records in camera, balancing the officer’s privacy interests against the defendant’s need for disclosure. (*City of Santa Cruz v. Municipal Court* (1989) 49 Cal.3d 74, 84.) To further protect privacy interests, “courts have generally refused to disclose verbatim reports or records of any kind from peace officer personnel files, ordering instead . . . that the agency reveal only the name, address and phone number of any prior complainants and witnesses and the dates of the incidents in question.” (*Ibid.*) If this limited information proves inadequate, however, defendant may seek additional discovery in a supplemental motion. (*Carruthers v. Municipal Court* (1980) 110 Cal.App.3d 439, 442; *Kevin L. v. Superior Court* (1976) 62 Cal.App.3d 823, 828-829.)

*Alvarez v. Superior Court* (2004) 117 Cal.App.4th 1107 (*Alvarez*) illustrates the issues confronting trial courts when disclosing a witness’s name, address, and phone number fails to aid defendant’s pretrial investigation. There, the trial court, after an in camera inspection of the investigating officer’s personnel file, provided the name of a deputy sheriff who had lodged a complaint against the officer. When the deputy sheriff refused to discuss the incident, the trial court granted defendant’s supplemental request for the witness’s statements kept in the investigating officer’s personnel file. In affirming, the Court of Appeal concluded “the practice of disclosing only the name of the complainant and contact information must yield to the requirement of providing sufficient information to prepare for a fair trial.” (*Id.* at p. 1112.) The court observed, “[t]he only way petitioner can effectively investigate this matter *before trial* is to be given the deputy’s statements.” (*Id.* at p. 1113.)

Relying on *Alvarez*, Van Dinter argues Sorrell and Brown’s refusal to reveal details concerning their internal affairs investigation of Naughton thwarted petitioner’s investigative efforts and compromised his right to a fair trial. According to

Van Dinter, Sorrell's vague, general statements coupled with the witnesses' refusal to discuss details, was tantamount to a showing of witness unavailability. Consequently, Van Dinter contends the trial court erred in failing to disclose "all verbatim reports, documents, memos, notes, and/or recordings concerning the previously disclosed complainant(s) and/or witness(es) from the personnel file(s) of [Naughton.]"

We need not resolve whether a witness's refusal to provide factual details requires disclosure of that witness's statements kept in the investigating officer's personnel file. Here, Van Dinter requested the names and contact information of *all* witnesses providing information that Naughton had fabricated evidence, filed false police reports, or engaged in dishonest acts. The trial court found defendant met the materiality requirement for an in camera review, and concluded Van Dinter was entitled to the names of Officers Sorrell and Brown, but did not provide the names of other pertinent witnesses. Sorrell informed Van Dinter's investigator that the misconduct investigation was prompted by a complaint from a local car dealership, but refused to provide the name of the dealer or the witnesses involved. Nor did Sorrell provide the names of two supervisors who asked Naughton about signing off on equipment violations without verifying whether the corrections had been made. We conclude Van Dinter is entitled to the names and contact information of these and any other witnesses who may provide Van Dinter with the specific information concerning any misconduct by the investigating officer relevant to Van Dinter's defense. If these witnesses are uncooperative or unavailable, he may then move to obtain the witnesses' statements under *Alvarez*.

## DISPOSITION

Let a peremptory writ of mandate issue compelling respondent court to set aside its order of July 9, 2004, denying petitioner's motion for supplemental discovery and, after conducting proceedings in compliance with Evidence Code section 1045, to enter a new and different order consistent with this opinion.

ARONSON, ACTING P. J.

WE CONCUR:

FYBEL, J.

IKOLA, J.